

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 312 of 1997

with

CRIMINAL APPEAL No 313 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

=====

STATE OF GUJARAT

Versus

SHANTILAL BULAKHIDAS SONI

-----

Appearance:

1. Criminal Appeal No. 312 of 1997

Mr.S.A.Pandya Ld. Asst. PUBLIC PROSECUTOR for Petitioner

2. Criminal AppealNo 313 of 1997

Mr.S.A.Pandya, Ld. Asstt. PUBLIC PROSECUTOR for Petitioner

MR HM PARIKH for Respondent No. 1, 2

-----

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 01/07/97

ORAL JUDGEMENT

Admit. Mr.Parikh, LA waives service. After holding the accused guilty, the learned Chief Judicial Magistrate, Nadiad, while dealing with Criminal Case No.5875 of 1990, by his order dated 27-1-1997, has decided to grant benefit of probation under Probation of Offenders Act to the convicted accused. It is the State that has filed the present appeals. The grievance made is essentially that the Magistrate while exercising the power, has not been careful enough to call for the report of the Probation Officer so far as accused no.2 is concerned, who is aged about 26 years, largely because, accused no.1, who, at the time of the commisson of offence, was 74 years old, has been given benefit of probation and therefore, the State felt that though the decision may be upheld but the learned Judge ought to have given proper reasons and should have followed the procedure.

2. The aforesaid feeling on behalf of the State

ventilated by way of this petition is eminently justified. However, Report of the Probation Officer was called by order dated 17-6-1997 passed by this Court and the Report having received, on perusal, it is found to be favouring the accused so far as the discretion of giving benefit of probation is concerned. Otherwise also, it is an established policy of the State that having held the accused guilty in suitable cases, benefit of probation be given so that on one hand the accused would not have the stigma of having undergone sentence of imprisonment and on the other, the complainant side would get the satisfaction of bringing the charge home and thereby the accused would be given an opportunity of mending their ways and maintaining peace. As stated above, to the extent that the learned Chief Judicial Magistrate did not call for the Report, discretion can be said to have exercised without any proper basis. However that having been corrected as aforesaid, this Court will not interfere with the order. At the same time, office is directed to send a copy of this order to the learned Chief Judicial Magistrate so that in future, he may take care to follow the procedure especially to call for the Report before exercising discretion of grant or otherwise of probation.

3. So far as the matters are concerned, nothing now survives. They are disposed of.